

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the First Amended
Accusation Against:**

Phong Hung Tran, M.D.

**Physician's and Surgeon's
Certificate No. A 74233**

Respondent.

Case No. 800-2016-019951

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 29, 2021.

IT IS SO ORDERED December 31, 2020.

MEDICAL BOARD OF CALIFORNIA



By: _____
Kristina D. Lawson, J.D., Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation Against:

PHONG HUNG TRAN, M.D., Respondent

Physician's and Surgeon's Certificate No. A 74233

Case No. 800-2016-019951

OAH No. 2019040901.1

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 22, 2020, by videoconference due to the COVID-19 pandemic pursuant to OAH's October 1, 2020 order.

Jason Ahn, Deputy Attorney General, Department of Justice, Office of the Attorney General, State of California, represented complainant, William J. Prasifka, Executive Director of the Medical Board of California (board).

Albert Garcia, Attorney at Law, represented respondent, Phuong Hung Tran, M.D., who was present.

The matter was submitted for decision on October 22, 2020.

SUMMARY

Complainant alleges four causes for discipline of respondent's license and asks that respondent's license to practice medicine be revoked. For the reasons detailed in this decision, respondent presented insufficient mitigating and rehabilitation evidence, in light of the serious nature of the crimes he committed, to justify a penalty less than revocation of his license.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 2, 1992, the board issued Physician's and Surgeon's Certificate No. G 74233 to respondent. The license will expire on January 31, 2022, unless it is renewed or revoked. (Pursuant to Business and Professions Code section 121 "license" includes "certificate.") Since June 3, 2016, his license has been suspended pursuant to a court order dated May 13, 2016, under Penal Code section 23 (PC 23), as a condition of bail related to the pending criminal charges that are the subject of this matter.

2. On October 21, 2020, complainant filed the first amended accusation against respondent. The accusation alleges four causes for discipline of respondent's license: (1) conviction of a crime substantially related to the qualifications, functions, or duties of a physician and surgeon, (2) dishonest or corrupt acts, (3) revocation or suspension of license due to Insurance Fraud and Workers' Compensation Fraud pursuant to Business and Professions Code section 810; and (4) general unprofessional conduct.

3. The alleged bases for all four causes for discipline are respondent's plea of guilty, on August 29, 2018, in United States District Court, to a felony violation of conspiracy to commit "honest services mail fraud" and "health care fraud" and on that same date, his guilty plea in Superior Court, County of San Diego, to felony violations of unlawful offer or delivery of health care services for the referral of patients, and unlawfully concealing an event affecting an insurance claim. Both guilty pleas arise from the same criminal conspiracy to commit insurance and workers' compensation insurance fraud. Respondent's sentencing for both crimes is pending while respondent cooperates with prosecutors against other individuals involved in the insurance fraud scheme. Complainant argues that, notwithstanding this, respondent's pleas of guilty constitute convictions under the Business and Professions Code for purposes of discipline of his license. Respondent did not dispute this argument and Business and Professions Code sections 490, subdivision (c), and 2336, subdivision (d), state that a guilty plea is deemed to be a conviction.

4. Respondent timely filed a notice of defense to the initial pleading in this matter, and this hearing followed.

Prehearing Motion to Bar the Testimony of Respondent's Witness

5. Complainant filed a motion in limine to bar the testimony of respondent's criminal defense lawyer from testifying. Respondent filed opposition to this motion and the matter was heard at the start of the hearing. After giving due consideration to the parties' arguments, complainant's motion was denied.

Respondent's Guilty Pleas and the Factual Bases for These Pleas

6. On August 29, 2018, respondent pled guilty to a one count-superseding indictment to Conspiracy to Commit Honest Services Mail Fraud and Health Care

Fraud, a violation of 18 U.S.C. §§1341, 1346 and 1349, in United States District Court for the Southern District of California, Case No. 16CR1409-H.

As alleged in Count 1 of this indictment, respondent conspired with others in violation of 18 U.S.C. §§ 1341 and 1346, "Honest Services Mail Fraud," and 18 U.S.C. 1347, "Health Care Fraud." As detailed in this indictment, respondent, with others, knowingly and with the intent to defraud, devised and participated in a material scheme to defraud and to deprive patients of the intangible right to their doctors' honest services, and caused mailings in furtherance of the scheme, in violation of 18, U.S.C. § 1341, and committed Health Care Fraud by knowingly and with the intent to defraud, devised and participated in a material scheme to defraud a health care benefit program, or to obtain money or property owned by, or under the custody or control of, a health-care benefit program by means of false or fraudulent pretenses, representations, or promise in violation of 18 U.S. C. § 1347, which were all in violation of 18, U.S.C. § 1349. (Exhibit 6.)

Under the terms of the plea agreement respondent signed on August 29, 2018, the applicable penalties for this crime include a maximum prison term of 20 years and a fine of \$250,000.

7. Also on August 29, 2018, respondent pled guilty in Superior Court, County of San Diego, Case No. SCD255524, to violating Labor Code section 3215 and Penal Code section 550, subdivision (b)(3), both felonies. Respondent acknowledged in his plea agreement that he may be subject to a maximum jail sentence of five years eight months, a maximum \$60,000 fine, and three years parole or supervised release. The factual bases of respondent's plea are incorporated in the federal plea agreement respondent signed. The indictment filed in the Superior Court was introduced at hearing.

8. In the plea agreement respondent signed in the federal case, respondent admitted under oath to the factual bases to both the federal and state charges and detailed the extent and nature of the criminal conspiracy he committed.

9. Specifically, in the agreement respondent admitted he engaged in the following criminal conduct:

1. Defendant PHONG HUNG TRAN was the owner of Coastline Medical Clinic in Southern California. From 1992 to June 2016, Dr. Tran was licensed as a physician and surgeon in the State of California. Defendant operated a medical clinic in Westminster, also treated patients at clinics owned by others, including clinics in San Diego, Escondido, and Calexico, California.

2. From at least April 2013 through June 2016, within the Southern District of California and elsewhere, defendant PHONG HUNG TRAN knowingly and intentionally conspired with JOHN PANGELINAN, JONATHAN PENA and others to commit the offenses of Honest Services Mail Fraud, in violation of 18 U.S.C. §§ 1341 and 1346, and Health Care Fraud, in violation of 18 U.S.C. § 1347.

3. It was the goal of the conspiracy to fraudulently obtain money from health care benefit programs by submitting claims for prescription pharmaceuticals, Durable Medical Equipment, Autonomic Nervous System testing, sleep studies, toxicology testing, and other medical goods

and services that were generated through a secret pattern of bribes to and from TRAN and other doctors (and those acting with them and on their behalf), to induce doctors to refer patients for those services, and to refer to particular providers, in violation of the doctors' fiduciary duty to their patients.

4. It was a further part of the conspiracy that defendant TRAN, knowing that receiving a per-patient referral fee was unlawful, agreed to accept per-patient bribes from the co-conspirators to refer patients to companies owned by his co-conspirators or in which they had an interest. It was a further part of the conspiracy that defendant TRAN, knowing that paying a per-patient referral fee was unlawful, agreed to pay per-patient bribes to co-conspirators to obtain access to patients for which TRAN could thereafter bill insurance companies for a variety of expensive and unnecessary goods and services.

5. It was a further part of the conspiracy that the co-conspirators negotiated specific bribe and kickback amounts for specific kinds of prescriptions, conspiracy that the co-and kickback amounts for including: between \$200-250 Interferential Unit (used for pain relief) ("IF Unit") \$50-100 for each compound cream prescription.

6. It was a further part of conspiracy that the co-conspirators bribed and solicited marketers and doctors to

prescribe per referral and the conspiracy that the co-compound creams and patches over other types of medications, because these custom pharmaceuticals can be billed at high rates to insurance companies.

7. It was a further part of the conspiracy that the co-conspirators crafted compound creams and other pharmaceuticals to contain the most expensive components, in order to bill at high rates to insurance companies, instead of customizing the medications to the needs of particular patients.

8. It was a further part of the conspiracy that the co-conspirators concealed from patients, and intended to cause the doctors to conceal from patients, the kickback and bribe payments made to doctors for referring patients to companies owned by the co-conspirators or in which they had an interest, in violation of the doctors' fiduciary duty to their patients.

9. It was a further part of the conspiracy that the co-conspirators obscured the true nature of their financial relationships in order to conceal their corrupt payments for patient referrals, including by: (1) entering sham agreements to purportedly lease office space, provide marketing services, or provide management services; (2) creating separate companies in the names of nominees and straw owners, to make and receive payments; and (3)

disguising payments as salaries for employees when in reality the corrupt payments were made in exchange for, or to induce, the referral of patients.

10. It was a further part of the conspiracy that the co-conspirators utilized the mails as an essential part of their fraudulent scheme, including by mailing bills to insurance carriers, and mailing prescription pharmaceuticals and DME to patients.

11. It was a further part of the conspiracy that co-conspirators billed, and caused insurers to bill, for services' provided to patients that the co-conspirators had procured by paying bribes and kickbacks.

12. It was a further part of the conspiracy that the co-conspirators concealed from insurers and patients the material fact of the kickback arrangements, which were in violation of California state law, that led to the referrals.

13. As a part of the scheme, on or about September 19, 2014, in a meeting attended by David Nguyen (charged elsewhere) and Alex Martinez (charged elsewhere), TRAN offered that he was willing to pay a greater bribe to chiropractor Dr. Steven Rigler (charged elsewhere) for access to his San Diego and Escondido patients, if Dr. Rigler would let TRAN prescribe expensive compound creams for them, explaining, "If you want something, more

contribution from me, then these, these compound [creams, I need to] control these."

14. In the same meeting, TRAN explained that he saw 70, 80, or 90 patients each time he visited Dr. Rigler's clinic in Calexico, and for that his "contribution" to Dr. Rigler was between \$4,000 and \$5,000, depending on the number of patients, but it was more worthwhile because TRAN had "control of the compounds."

15. TRAN explained that the unlawful referral payments would be disguised as rent up to a certain amount, and then salary, offering, "If we work together and [you] say, hey okay, well you know, we [will] hand you this office and these are the numbers of patients we're gonna get to you on a monthly basis, for Escondido, for San Diego, then what I wanna pay you basic rent, [then] salary as to the difference, it's gonna be paid by a management company. . . that's the only way to protect us. I can do, even on the rent payment, Because it doesn't make sense, you know, if I go over there and I pay you four, five thousand dollar each office [for rent] and do, once a month . . . you know . . . doesn't make sense."

16. Using the combination of basic rent and salaries, TRAN specified the total that he would offer for the number of patients: "[for] 80, about \$4,000; 100 [patients] is about \$5,000."

17. As a part of the scheme, in November 2015, TRAN and PANGELINAN discussed a bribe payment of over \$100 per cream TRAN would prescribe.

18. On or about November 4, 2015, TRAN asked PENA to send kickback money to a separate marketing company, because TRAN did not want the money going directly to him. TRAN asked PENA to send him a text message that used the code "Let's meet at one [o'clock]" if PENA would pay \$100 per compound cream prescription, or "two [o'clock]" if PENA would pay \$200.

19. On or about November 16, 2015, PANGELINAN delivered to TRAN or TRAN's representative a check for \$10,000 made out to "Team Enterprise," in payment for 50 IF Units referred by TRAN to Post Surgical Rehab ("Post-Surgical").

20. On or about November 24, 2015, PANGELINAN suggested a new kickback deal with TRAN, to pay TRAN over \$100 for each compound cream prescription that TRAN prescribed.

21. Sometime before December 2015, TRAN and PANGELINAN agreed that TRAN would receive \$10,000 per month (disguised as payment for "marketing" services) in exchange for referring 50 IF Units per month to Post-Surgical.

22. On or about December 8, 2015, TRAN said that he would be sending many more DME referrals to Post-Surgical, and in order for Post-Surgical to "catch up" on payments due him, TRAN suggested that he only have [*sic*] to refer 40 IF Units per month in exchange for the \$10,000 monthly payment. On or about December 8, 2015, TRAN and PANGELINAN agreed that TRAN would be paid \$125 per compound cream that he prescribed.

23. On or about December 8, 2015, TRAN and PANGELINAN agreed that TRAN would be paid \$125 per compound cream that he prescribed.

24. On or about December 15, 2015, PANGELINAN delivered to TRAN a check for \$10,000 made out to "Team Enterprise," in payment for 50 IF Units referred by TRAN to Post-Surgical.

25. On or about December 8, 2015, TRAN told PANGELINAN that he was opening a new marketing company through which he would be paid for the compound cream kickbacks, although it would be run by "none of my family members" because "you gotta be smart."

26. TRAN also explained that he needed to have a justification ready that the compound creams were medically necessary, noting, "I always think, what if people

ask me, you know, a medical necessity. . . you know the more I'm able to justify what I do the better for me. Because I'm gonna have to assume that it will come down to that point."

27. On or about January 14, 2016, PANGELINAN delivered to TRAN a check for \$10,000 made out to "Team Enterprise," in payment for 40 or 50 IF Units referred by TRAN to Post-Surgical.

28. TRAN agrees that he intentionally engaged in or caused conduct constituting sophisticated means, including by setting up and utilizing various shell companies, falsifying payment records to reflect payments as being for "rent" or "salary," maintaining no checking accounts, and otherwise concealing his receipt of the benefits of this kickback and cross-referral scheme. TRAN agrees that his offense involved abuse of his position of trust with respect to his patients.

29. TRAN agrees that his offense involved abuse of his position of trust with respect to his patients.

30. TRAN further agrees that the California Workers' Compensation system is a "government health care program" within the meaning of Sentencing Guidelines Section 2B1.1(b)(7), and that his crime caused loss greater than \$1 million to a government health care program.

31. TRAN agrees that he had an aggravated role in the offense, in that he managed and supervised office staff and medical professionals at his clinic to act in ways to further his kickback scheme, including by directing office managers to pay cappers for patient referrals, and directing his physician's assistants to prescribe the medical ancillary products and services for which Tran was to receive a kickback payment.

32. Using the manners and means described above, defendant and his co-conspirators submitted and caused to be submitted claims between \$3.5 million and \$9.5 million for goods and services procured through the payment of bribes and kickbacks.

(Exhibit 4, pp. AGO-009 to 014, §§ 1 to 32.)

10. With respect to the state charges, respondent admitted, again under oath, that he engaged in the following criminal conduct in violation of Labor Code section 3215 and Penal Code section 550, subdivision (b)(3):

1. As to Count 21: On or about April 28, 2015, Defendant Phong Hung Tran gave to another person a check (#1381) in the amount of \$8,000 payable to Crosby Square Chiropractic and drawn on the checking account of MD Pharma, Inc. MD Pharma, Inc. was a management company with which Defendant was affiliated. MD Pharma, Inc.'s main purpose for existence was to help Defendant

conceal illegal kickback payments. This \$8,000 check was disguised as "rent" in an effort to conceal the fact that it was really an illegal kickback payment intended as compensation to another for the referral of patients in the California Workers [Compensation] System. The illegal compensation for the referral of patients included payment by Defendant to another based on the number of prescriptions for compounded pharmaceutical creams Defendant and his agents were able to write for the referred patients (\$50 per patient). Defendant paid the illegal \$8,000 kickback to another because defendant himself had arranged to receive illegal kickbacks from persons associated with the pharmaceutical companies who would fill the expensive prescriptions for the compounded creams.

2. As to Count 44: As more fully set forth above. Defendant paid illegal kickbacks to another for access to these patients, including a payment of \$50 for each compounded pharmaceutical cream Defendant or his agents would write. Defendant had an arrangement with persons associated with the pharmaceutical companies who would fill the compounded cream prescriptions whereby Defendant would receive illegal kickbacks for writing the prescriptions, Defendant knew that these pharmaceutical companies would and did submit bills to insurance companies in the California Workers Compensation system for these compounded pharmaceutical creams,

Defendant did aid and abet and conspire with others to conceal from the insurance companies the existence of illegal kickbacks tied to the patients for whom bills were sent to insurance companies, including State Compensation Insurance Fund. Defendant knew that the no insurance company in the California Workers' Compensation System would or could pay any bill for services or products for any patient when the services or products (including prescription medications) were tied to an illegal kickback. A bill was sent on or about November 4, 2014, to State Compensation Insurance Fund for compounded pharmaceutical cream for patient Richard D. This bill was sent by a pharmaceutical company seeking payment in the amount of \$2,475.73 for the compounded cream provided to a patient in the California Workers' Compensation System. Defendant was the prescriber of the compounded cream and was listed as the prescriber on the bill submitted. Defendant paid an illegal kickback to another for access to unwitting patient Richard D. Defendant paid an illegal kickback to another for access to unwitting patient Richard D. Defendant expected to receive an illegal kickback from persons associated with the pharmacy filling the prescription for Richard D. Defendant knew the pharmacy would send the aforementioned bill to the insurer. Defendant did assist and conspire with others to conceal and fail to disclose to State Compensation Insurance Fund

any illegal kickbacks associated with compounded pharmaceutical creams for patient Richard D.

(Exhibit 4, pp. AGO-015 to 017.)

11. In exchange for his pleas of guilty in state and federal courts, both courts delayed sentencing respondent to allow respondent to cooperate in the prosecution of other individuals involved in the criminal conspiracy. Per respondent's criminal defense attorney, Mr. Warwick, who testified in this matter, he does not anticipate this will happen before August 2021. Also, per Mr. Warwick, respondent is fully cooperating with the prosecution of these individuals and he expects that the federal court will apply a downward departure for his cooperation to the recommended sentence for the crimes he committed under the federal sentencing guidelines. Per the plea agreement, respondent will first be sentenced in the federal case.

Respondent's Testimony and Evidence

RESPONDENT'S TESTIMONY

12. Respondent's testimony is summarized as follows:

Respondent came to the United States as a refugee after the Vietnam War. He was educated at the University of Memphis where he obtained his medical degree in 1990 and was trained in anesthesia, pain management and completed fellowships in obstetrics and pain management. He obtained a master's degree at the University of California at Irvine. Presently he is a law student at Pacific Coast University. Respondent is not employed.

Until 2016 when he was barred from practicing medicine as a condition of his bail in the criminal matters, he maintained a medical practice, primarily, in Westminster, California.

13. Respondent described the nature of the conduct he engaged in as a "kick-back scheme for products and services in exchange for referrals." He denied that he was the principal organizer of this criminal scheme and stated his involvement began at the initiation of an individual who contacted him with an offer, he now recognizes, that was too good to be true. He quickly added he made the wrong decision to involve himself in this scheme.

14. Respondent attributed his conduct to his gambling addiction. His addiction to gambling was extensive. He noted he had gambling losses, at times, of about \$50,000 a day and he had to borrow between \$100,000 to a million dollars to maintain his addiction. He said he "got into a situation where he accumulated a large amount of debt" and needed to fund his addiction and need through the criminal conduct. Despite his addiction to gambling, respondent has not been in treatment to address the condition. Respondent also said alcohol contributed to his conduct, but he only went to Alcoholics Anonymous (AA) twice because this program was not for him.

15. Respondent, it seems, in addition to his problems with gambling and alcohol, attributed his conduct to Post Traumatic Stress Disorder (PTSD). He stated he has PTSD due to the traumatic events he suffered as a refugee fleeing Vietnam and his experience on a boat at sea for 30 days. Respondent has also not been in treatment for this condition. It is not clear from the record how his PTSD contributed to his criminal behavior.

16. Respondent emphasized that he has cooperated with federal and state prosecutors in the prosecution of other individuals in the criminal scheme and he continues to render assistance.

17. Respondent said he is very remorseful and ashamed about his conduct, he is embarrassed and humiliated, feels that he is living in a prison every day, and accepts responsibility for his conduct. He said he failed his community and family. He stated he always led a "focused life" and for a "small period of time [he] lost track." He said he will do amends although he said there was "no victim." Later in his testimony he sought to correct this statement and acknowledged there were victims of his behavior. He said he has learned to understand his actions, learned ethics and boundaries, taken and completed an ethics course at the University of California Irvine, and he is now a different person.

18. As an accurate summary of sentiments about his behavior and his acceptance of responsibility, respondent referenced a letter he wrote to the sentencing judge in the federal criminal case. (Exhibit C.) In this letter he acknowledged that his conduct defrauded the California healthcare system of millions of dollars, hurt his patients, the community and his family.

19. Respondent believes he has transformed himself and is rehabilitated. He said he needed to "come back to the person he was to help people" and as an indication of his desire to do this he connected with a few clinics in his community that gave out masks. He also said he had an opportunity to go to the border and "treat" Covid patients as a volunteer doctor and he sought to have the board lift the Superior Court PC 23 order barring him from the practice of medicine so he could do this. However, the Deputy Attorney General (DAG) who is prosecuting this matter "turned down" his request. He said his request is still "pending" because he wants to use his

training to help people during the pandemic. Respondent it is noted here appealed the PC 23 restriction on his license to the Court of Appeal and the Court of Appeal, on June 27, 2016, denied his petition.

20. As evidence of his rehabilitation, respondent cited his renewed religious faith and work at a Buddhist temple as evidence of his personal transformation.

21. Respondent's testimony that he accepts full responsibility for his criminal conduct and is rehabilitated is found not credible for several reasons. First, respondent acknowledged that his gambling addiction and debts from gambling contributed to his need to participate in the criminal scheme to fund his addiction. Despite this, he has not participated in therapy or groups for persons with gambling addiction. Considering the severity of his gambling addiction, his failure to engage in any therapy is notable. His use of alcohol also appears to have contributed to his criminal behavior and, aside from two occasions, he did not participate in AA and has not obtained therapy. Similarly, respondent did not seek or obtain therapy for the PTSD condition he said he has which may have contributed to his problem behaviors. Further, while admitting he defrauded the California healthcare system of millions of dollars over an extended time frame, respondent minimized his role as a participant, despite the clear evidence, including text messages, to the contrary. In his testimony he suggested he went along with an offer to participate in the scheme and he incorrectly testified that his conduct occurred over a "small" amount of time. As detailed in his allocution he made under oath, respondent seems to have been the key person of the criminal conspiracy, if not principal of the illegal scheme, and the illegal conduct occurred over a three year time period and involved numerous individuals, numerous offices around Southern California, numerous patients and a substantial sum of money.

RESPONDENT'S WITNESSES

22. Reverend Aprekee Punyasiri testified as a character witness for respondent. He is the Abbot and CEO of Maithree Vihara Buddhist and Meditation Center. Reverend Punyasiri is aware of the charges against respondent and read the accusation. He said respondent has been honest with him about his criminal conduct and acknowledged his mistake and has sought to correct himself.

Reverend Punyasiri stated respondent has been an active member of the temple community and he has materially contributed to the maintenance and development of the temple. In addition to his testimony Reverend Punyasiri wrote a letter on respondent's behalf which is consistent with his testimony.

23. Respondent also called Habib Akl as a character witness. Mr. Akl is a fellow law student of respondent and works as a paralegal. He has known respondent for the last three years. He is familiar with the charges against respondent.

Mr. Akl, based on conversations he has had with respondent, believes respondent committed a "dishonest act" and is now completely rehabilitated related to his gambling addiction specifically and in general. He has further formed the opinion that respondent is a person of honesty and integrity and this opinion is not altered by the criminal case against him. Mr. Akl submitted a letter on respondent's behalf which is consistent with his testimony.

RESPONDENT'S CHARACTER REFERENCE LETTERS

24. In addition to the testimony of these two persons, respondent submitted letters of support from the following persons:

Andrew Blount, who is a former Mayor of Laguna Hills and a former patient of respondent, in a letter dated October 5, 2020, stated he is grateful for the treatment respondent provided him and believes notwithstanding the charges against him he is trustworthy and competent.

Allison Mong Lan Dao is respondent's former employee and friend. In a letter dated October 14, 2020, she stated that respondent helped educate people in the community regarding COVID-19 and how to protect themselves. Respondent also helped arrange for masks for the most vulnerable members of the community. She described him as a highly respected and skilled doctor and a vital member of the community. She did not state she was aware of the specific charges against respondent.

Sam Kortab knows respondent through law school and in a letter dated October 14, 2020, described him as kind, compassionate, understanding, and caring. He believes respondent to be an honest and competent person. Mr. Kortab is aware of the charges against respondent.

Chandao Nina Nantha is an attorney. In a letter dated October 5, 2020, she wrote she has known respondent since 1996. She also stated she read the charges against him and believes that the "allegations are skewed, not accurate, misleading and taken out of context from the overall facts." Ms. Nantha said respondent is a vital member of the community, a skilled doctor, and he has "never exhibited any character of dishonesty."

Tuan Nguyen, D.O., has known respondent for more than 20 years. In a letter dated October 11, 2020, Dr. Nguyen described respondent's conduct as out of character and respondent is a committed, skilled, empathetic, and brilliant doctor. His

understanding of the charges came from respondent. He said respondent explained the charges against him in detail and said he accepts responsibility. Dr. Nguyen asks that respondent be allowed to continue to practice medicine.

Michael Vo is Mayor Pro Tem of Fountain Valley. In a letter dated October 14, 2020, Mr. Vo stated he is familiar with the charges against respondent. He said respondent took care of his parents and he developed a close friendship with him. Mr. Vo described respondent as a compassionate, trustworthy person of outstanding character and integrity and his conduct does not reveal his true character. Mr. Vo added that respondent accepted responsibility for his conduct. He did not state if he was aware of the specific criminal charges against respondent.

The Parties' Arguments

25. Complainant asserts that the revocation of respondent's license is the appropriate remedy considering the nature and extent of respondent's "sophisticated" criminal conduct. This conduct involved millions of dollars, "shell companies" respondent set up, "coded text messages" to conceal the criminal conduct, 20 office locations throughout Southern California, and numerous patients. Complainant argues that respondent presented little rehabilitation evidence to justify a disposition less than revocation of his license. Complainant further argues that under Business and Professions Code section 810, subdivision (b), revocation of respondent's license is required or, at the minimum consistent with the board's disciplinary guidelines, respondent's license should be subject to a seven year period of probation and his license suspended for one year.

26. Respondent argues that revocation of respondent's license is not the appropriate remedy because respondent demonstrated he is rehabilitated consistent

with the board's disciplinary guidelines and applicable regulation. Respondent also argues that Business and Professions Code section 810 does not apply to respondent's situation because the statute specifically uses the word "conviction" and respondent has not yet been sentenced and, thus, is not convicted. Respondent's argument here is not found persuasive. Although Section 810 uses the word "conviction," under Business and Professions Code sections 2236, subdivision (d), and 490, subdivision (c), a "conviction" for purposes of imposing discipline is defined to include a guilty plea. Given this, the use of the word "conviction" in Section 810 is read *in pari materia* to incorporate the definition of "conviction" in Sections 2236, subdivision (d), and 490, subdivision (c).

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the amended accusation are true.

2. The standard of proof required in this matter is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The obligation to establish charges by clear and convincing evidence is a heavy burden. It requires a finding of high probability; it is evidence so clear as to leave no substantial doubt, or sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

Applicable Statutes

3. Business and Professions Code section 7.5 provides:

(a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

4. Business and Professions Code section 490 provides:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted

of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of

California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

5. Business and Professions Code section 2227 provides:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee

complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

6. Business and Professions Code section 2234 provides in relevant part:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

[¶] . . . [¶]

(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon. . . .

7. Business and Professions Code section 2236 provides:

(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The

division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.

8. Business and Professions Code section 810 provides in relevant part:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the

opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medical program, including the Denti-Cal element of the Medical program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

Criminal Statutes Referenced in this Decision

9. 18 U.S.C. § 1341 provides as follows:

Whoever, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

10. 18 U.S.C. § 1347, "Health Care Fraud", provides as follows:

Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice —

(1) to defraud any health care benefit program; or

(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.

(b) With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section

11. Labor Code section 3215 provides as follows:

Except as otherwise permitted by law, any person acting individually or through his or her employees or agents, who offers, delivers, receives, or accepts any rebate, refund, commission, preference, patronage, dividend, discount or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring clients or patients to perform or obtain services or benefits pursuant to this division, is guilty of a crime.

12. Penal Code section 550, subdivision (b)(3), provides as follows:

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

Case Law Regarding Unprofessional Conduct

13. In *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575, the appellate court noted that "unprofessional conduct" as that term was used in Business and Professions Code section 2361 (now section 2234), included certain enumerated conduct. (*Id.* at p. 575.) The court further stated (*Ibid.*):

This does not mean, however, that an overly broad connotation is to be given the term "unprofessional conduct;" it must relate to conduct which indicates an unfitness to practice medicine. [Citations.] Unprofessional conduct is that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. [Citation.]

Cause Exists to Impose Discipline Against Respondent's License

14. Cause exists under Business and Professions Code sections 2227, 2234, and 2236, subdivision (a), to impose discipline against respondent's license.

Complainant established by clear and convincing evidence that respondent was convicted on August 29, 2018, in federal and state courts of Conspiracy to Commit Honest Services Mail Fraud and Health Care Fraud, in violation of 18 U.S.C. §§ 1341, 1346 and 1349, and Insurance Fraud and Workers' Compensation Fraud in violation of Penal Code section 550, subdivision (b)(3), and Labor Code section 3215. Respondent's pleas of guilty to these offenses constitute convictions under Business and Professions Code sections 490, subdivision (c), and 2236, subdivision (d). Respondent committed these crimes during patient care, treatment, management and billing.

15. Cause exists under Business and Professions Code section 2227 and 2234, subdivision (e), to impose discipline against respondent's license. Complainant established by clear and convincing evidence that respondent committed dishonest and corrupt acts based on his detailed admission that he committed Conspiracy to Commit Honest Services Mail Fraud and Health Care Fraud, in violation of 18 U.S.C. §§ 1341, 1346 and 1349, and Insurance Fraud and Workers' Compensation Fraud in violation of Penal Code section 550, subdivision (b)(3), and Labor Code section 3215. Respondent committed these crimes during patient care, treatment, management and billing.

16. Cause exists under Business and Professions Code sections 810, subdivisions (b) and (c)(1); 2227; and 2236, subdivision (a), to impose discipline against respondent's license. Complainant established by clear and convincing evidence that respondent was convicted of Workers' Compensation Fraud and Insurance Fraud, both felonies, in violation of Penal Code 550 section (b)(3), and Labor Code section 3215.

17. Cause exists under Business and Professions Code sections 2227 and 2234 to impose discipline against respondent's license. Complainant proved by clear and convincing evidence, based on the above findings of cause for discipline, that

respondent engaged in general unprofessional conduct because his conduct was unbecoming a member in good standing of the medical profession.

The Board's Disciplinary Guidelines and Evaluation Regarding the Degree of Discipline

18. With causes of discipline having been found, the determination now must be to assess the degree of discipline and the terms and conditions, if any, to impose. In this regard, the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition, 2016) states:

The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

19. For the violations established in this matter, the Board's disciplinary guidelines, as discussed earlier, provide the following recommended terms and conditions or general dishonesty related to the qualifications, functions or duties of a physician arising from or occurring during patient care, treatment, management or billing: the minimum recommended penalty is seven years' probation, a one-year

suspension, and specific terms and conditions; the maximum penalty is revocation. Similarly, for a crime substantially related to the qualifications, functions, or duties of a physician arising from or occurring during patient care, treatment, management or billing, the recommended minimum penalty is seven years' probation, a one-year suspension with specific terms and conditions; the maximum penalty is revocation.

Disciplinary Considerations and Disposition Regarding the Degree of Discipline

20. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

21. The determination whether respondent's license should be revoked or suspended involves evaluating the nature and severity of the conduct and rehabilitation and mitigation factors as set forth under California Code of Regulations, title 16, section 1360.1. This rule provides as follows:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for

a license, certificate or permit shall consider the following criteria:

- (a) The nature and severity of the act(s) or offense(s).
- (b) The total criminal record.
- (c) The time that has elapsed since commission of the act(s) or offense(s).
- (d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

22. After considering the board's guidelines, and the factors under California Code of Regulations, title 16, section 1360.1, the evidence of rehabilitation, and the evidence of record as a whole, it is determined that the only disposition that would ensure public protection is revocation of respondent's license.

This conclusion is reached for these reasons: Respondent's criminal conduct was serious, widespread, pervasive, and occurred over a notable time period. His criminal scheme involved multiple actors, multiple locations throughout Southern California, efforts to conceal his criminal conduct, patients whose care was determined based on the monetary reward he and his co-conspirators received, and a cost to the California

healthcare system of millions of dollars. It goes almost without saying, but insurance fraud is a very serious violation of trust of a patient and his or her physician. Sending patients for unnecessary medical treatment to increase the amount of insurance billings causes harm to the patient, insurance companies, and the general public, as well as constitutes a serious violation of the trust between a physician and patient. It is also worth noting here that no other profession passes so completely within the power and control of another as does the practice of medicine. The physician-patient relationship is built on trust. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578-579.) By respondent's conduct he violated the trust numerous patients placed in him when he put his financial interests before their care.

Considering the severity of the crimes he committed, it was incumbent on respondent to present compelling evidence that he is rehabilitated and can now maintain his medical license. Such a conclusion cannot be made based on the minimal evidence of rehabilitation he presented. This evidence consists of his work at his temple, his religious faith, some volunteer work he has done related to the pandemic COVID-19 pandemic in his community, his completion of an ethics course, and his desire to help people as a practicing doctor. This evidence does not show that respondent has transformed himself; it only shows that respondent is beginning the process of transforming himself.

As an aggravating factor in favor of the most severe level of discipline, and as discussed earlier, respondent has not participated in therapy or counseling to address the gambling addiction, alcohol abuse, or PTSD that he claims led him to involve himself in insurance fraud. In addition, also as discussed earlier, respondent did not fully acknowledge his misconduct. He suggested he was less than a central player in the criminal enterprise. Such a view is incorrect according to the factual basis of his

guilty plea. Additionally, his initial statement in his testimony that there were no victims of his conduct suggests he does not appreciate the true gravity of his misconduct. Although he sought to correct himself later in his testimony, his initial statement seems to reflect his true attitude about his conduct. Also, respondent deflected blame for his conduct when he appeared to criticize the DAG who is prosecuting this matter for not allowing him to practice as a volunteer doctor at the border to help persons in need by agreeing to lift the PC 23 restriction. Respondent here seems to not accept the seriousness of his misconduct, or the consequences of it. The DAG, it is noted, represents complainant, and for purposes of the PC 23 matter, the board. The Superior Court, not the DAG, decides whether or not to lift or modify the restriction. (Respondent did appeal the restriction on his license and the Court of Appeal denied his petition.)

Due consideration has been given to the testimony of respondent's character witnesses and the statements of multiple witnesses who describe him as a skilled doctor, a caring and compassionate person, and a valued member of the community. Consideration has also been given to respondent's cooperation with prosecutors in the pending criminal matter. However, these considerations do not allow for a different conclusion. His cooperation with prosecutors must be deemed, in large part, an effort to avoid a long-term prison sentence and punishment. Regarding the statements of persons who have known him, few of these persons seemed to have an understanding of respondent's criminal conduct; indeed one person who wrote a letter on respondent's behalf dismissed the charges against him entirely. These witnesses' statements were simply unpersuasive as evidence that respondent has transformed himself in light of respondent's criminal conduct.

For these reasons, based on the record as a whole, it is concluded that respondent's license must be revoked to ensure protection of the public.

ORDER

Physician's and Surgeon's Certificate, No. A 74233 issued to respondent Phong Hung Tran, M.D. is revoked.

DATE: November 20, 2020

Abraham M. Levy
Abraham M. Levy (Nov 20, 2020 1:42 PST)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings

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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Accusation Against:

Case No. 800-2016-019951

15 **Phong Hung Tran, M.D.**
16 **14362 Bushard Street, Spc. 125**
Westminster, CA 92683-5171

FIRST AMENDED ACCUSATION

17 **Physician's and Surgeon's Certificate**
18 **No. G 74233**

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

23 1. William Prasifka (Complainant) brings this First Amended Accusation solely in his
24 official capacity as the Executive Director of the Medical Board of California, Department of
25 Consumer Affairs (Board).

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2. On or about June 2, 1992, the Medical Board issued Physician's and Surgeon's Certificate No. G 74233 to Phong Hung Tran, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2022, unless renewed.

JURISDICTION

3. This First Amended Accusation, which supersedes Accusation No. 800-2016-019951, filed on January 25, 2019, in the above-entitled matter, is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

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5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“ ”
...

6. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

“ . . .

“(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred.”

7. California Code of Regulations, title 16, section 1360, states:

“For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act.”

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1 8. Section 810 of the Code states:

2 “(a) It shall constitute unprofessional conduct and grounds for disciplinary
3 action, including suspension or revocation of a license or certificate, for a health care
4 professional to do any of the following in connection with his or her professional
5 activities:

6 “(1) Knowingly present or cause to be presented any false or fraudulent claim
7 for the payment of a loss under a contract of insurance.

8 “(2) Knowingly prepare, make, or subscribe any writing, with intent to present
9 or use the same, or to allow it to be presented or used in support of any false or
10 fraudulent claim.

11 “(b) It shall constitute cause for revocation or suspension of a license or
12 certificate for a health care professional to engage in any conduct prohibited under
13 Section 1871.4 of the Insurance Code or Section 549 or 550 of the Insurance Code.

14 “(c)(1) It shall constitute cause for automatic suspension of a license or certificate
15 issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing
16 with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing
17 with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the
18 Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been
19 convicted of any felony involving fraud committed by the licensee or certificate holder in
20 conjunction with providing benefits covered by worker's compensation insurance, or has
21 been convicted of any felony involving Medi-Cal fraud committed by the licensee or
22 certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal
23 element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000),
24 or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and
25 Institutions Code. The board shall convene a disciplinary hearing to determine whether or
26 not the license or certificate shall be suspended, revoked, or some other disposition shall be
27 considered, including, but not limited to, revocation with the opportunity to petition for
28 reinstatement, suspension, or other limitations on the license or certificate as the board
 deems appropriate.

 “(2) It shall constitute cause for automatic suspension and for revocation of a license
or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5
(commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7
(commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or
pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder
has more than one conviction of any felony arising out of separate prosecutions involving
fraud committed by the licensee or certificate holder in conjunction with providing benefits
covered by worker's compensation insurance, or in conjunction with the Medi-Cal program,
including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7
(commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part
3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary
hearing to revoke the license or certificate and an order of revocation shall be issued unless
the board finds mitigating circumstances to order some other disposition.

1 (3) It is the intent of the Legislature that paragraph (2) apply to a licensee or
2 certificate holder who has one or more convictions prior to January 1, 2004, as provided in
3 this subdivision.

4 (4) Nothing in this subdivision shall preclude a board from suspending or revoking a
5 license or certificate pursuant to any other provision of law.

6 (5) "Board," as used in this subdivision, means the Dental Board of California, the
7 Medical Board of California, the California Board of Podiatric Medicine, the Board of
8 Psychology, the State Board of Optometry, the California State Board of Pharmacy, the
9 Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

10 (6) "More than one conviction," as used in this subdivision, means that the licensee
11 or certificate holder has one or more convictions prior to January 1, 2004, and at least one
12 conviction on or after that date, or the licensee or certificate holder has two or more
13 convictions on or after January 1, 2004. However, a licensee or certificate holder who has
14 one or more convictions prior to January 1, 2004, but who has no convictions and is
15 currently licensed or holds a certificate after that date, does not have "more than one
16 conviction" for the purposes of this subdivision.

17 (d) As used in this section, health care professional means any person licensed or
18 certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or
19 the Chiropractic Initiative Act.

20 9. Unprofessional conduct under Business and Professions Code section 2234 is conduct
21 which breaches the rules or ethical code of the medical profession, or conduct which is
22 unbecoming a member in good standing of the medical profession, and which demonstrates an
23 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
24 575.)

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Conviction of a Crime Substantially Related to the Qualifications, 27 Functions, or Duties of a Physician and Surgeon)**

28 10. Respondent has subjected his Physician's and Surgeon's Certificate No. G 74233 to
disciplinary action under sections 2227 and 2234, as defined by section 2236, subdivision (a), of
the Code, in that he has been convicted of a crime substantially related to the qualifications,
functions, or duties of a physician and surgeon, as more particularly alleged hereinafter:

11. On or about August 29, 2018, Respondent entered into a plea agreement as to federal
criminal case number 16CR1409-H, in the United States District Court for the Southern District of

1 California (the federal case), and the state criminal case number SCD255524, in the Superior Court
2 of California, County of San Diego (the state case).

3 12. In the federal case, Respondent pled guilty to a one-count Superseding Information
4 charging him with Conspiracy to Commit Honest Services Mail Fraud and Health Care Fraud, in
5 violation of 18 U.S.C. § 1349. Based on this conviction, the applicable penalties include, but are
6 not limited to, a maximum of twenty (20) years in prison and a maximum fine of \$250,000.00 or
7 twice the gross gain or loss derived from the offense. The elements of the offense to which
8 Respondent pled guilty are as follows:

9 (a) "Conspiracy" under 18 U.S.C. § 1349: 1) There was an agreement between two
10 or more persons to commit Honest Services Fraud and Health Care Fraud and 2) Respondent
11 entered into the agreement knowing of at least one of its objects and intending to help
12 accomplish it.

13 (b) "Honest Services Mail Fraud" under 18 U.S.C. § 1341 and §1346: 1) Respondent
14 devised or knowingly participated in a scheme to deprive a victim of his or her right to a
15 doctor's honest services. 2) The scheme consisted of soliciting and facilitating the receipt of
16 kickback payments from suppliers of healthcare services and products to be paid to the doctor
17 in exchange for referrals. 3) The doctor, as a healthcare professional, owed a fiduciary duty
18 to the victim. 4) Respondent acted with the intent to defraud by depriving the victim of his
19 or her right to the doctor's honest services. 5) Respondent's act was material, that is, it had
20 a natural tendency to influence, or was capable of influencing, a person's acts. 6) Respondent
21 used, or caused someone to use, the mails to carry out or attempt to carry out the scheme or
22 plan.

23 (c) "Health Care Fraud" under 18 U.S.C. § 1347: 1) Respondent knowingly
24 executed, or attempted to execute, a scheme or artifice to defraud a health-care benefit
25 program, or to obtain money or property owned by, or under the custody or control of, a
26 health-care benefit program by means of false or fraudulent pretenses, representations, or
27 promises. 2) The false or fraudulent pretenses, representations, or promises related to a
28 material fact. 3) Respondent acted willfully and intended to defraud. 4) Respondent did so

1 in connection with the delivery of or payment for health-care benefits, items, or services.

2 13. In the state case, Respondent pled guilty to Count 21, Unlawfully offer/deliver
3 compensation for the referral of patients in violation of California Labor Code Section 3215, and
4 Count 44, Unlawfully conceal an event affecting an insurance claim in violation of California Penal
5 Code Section 550, Subdivision (b)(3), both felony crimes. The combined maximum penalty for
6 both counts is 5 years 8 months in prison and a fine of \$60,000.00. The elements of the offenses
7 to which Respondent pled guilty are as follows:

8 (a) "Unlawfully Offer/Deliver Compensation for Referral of Patients" under
9 California Labor Code, Section 3215: 1) Respondent did, acting individually, or through his
10 employees or agents offer, deliver, receive or accept; 2) Any consideration to or from any
11 person; 3) As compensation or inducement for; 4) The referral of patients, clients, or
12 customers to perform or obtain services or benefits; and 5) Involving California Worker's
13 Compensation insurance.

14 (b) "Unlawfully Conceal an Event Affecting an Insurance Claim" under California
15 Penal Code, Section 550, Subdivision (b)(3): 1) Respondent did, knowingly assist, or
16 conspire with another, to conceal or fail to disclose the occurrence of an event; 2) That affects
17 any person's right or entitlement to an insurance benefit or payment, or amount of benefit or
18 payment; and 3) With the specific intent to defraud.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Dishonesty or Corruption)**

21 14. Respondent has further subjected his Physician's and Surgeon's Certificate No.
22 G 74233 to disciplinary action under sections 2227 and 2234, as defined by section 2234,
23 subdivision (e), of the Code, in that he has committed an act or acts of dishonesty or corruption,
24 as more particularly alleged in paragraphs 10 through 13, above, which are hereby incorporated
25 by reference and realleged as if fully set forth herein.


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DATED: **OCT 21 2020**


WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant